IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA MICHELLE LAMBERT,	:	
Petitioner	:	**CIVIL ACTION NO. 01-CV-2511**
v.	:	
	:	
CHARLOTTE BLACKWELL,	:	**(JUDGE DALZELL)**
SUPERINTENDENT, *et al.,*	:	
Respondents	:	

O R D E R

AND NOW, this _____ day of _____, 2001, upon consideration of respondents' motion for recusal of assigned judge, said motion is hereby **GRANTED**. The undersigned recuses himself from participating in this action and directs that the case file be returned to the Clerk for assignment of this matter to another member of this Court.

BY THE COURT:

_____
Stewart Dalzell, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA MICHELLE LAMBERT,	:	
Petitioner	:	**CIVIL ACTION NO. 01-CV-2511**
v.	:	
	:	
CHARLOTTE BLACKWELL,	:	**(JUDGE DALZELL)**
SUPERINTENDENT, *et al.,*	:	
Respondents	:	

RESPONDENTS' MOTION FOR RECUSAL OF ASSIGNED JUDGE

Respondents, by their attorneys, hereby respectfully move the Court, pursuant to 28 U.S.C. § 455(a), to recuse itself from participating in this *habeas corpus* matter filed pursuant to 28 U.S.C. § 2254 by Pennsylvania prisoner, Lisa Michelle Lambert.

As set forth in more detail in the accompanying memorandum in support of this motion, the Court should take such action because, given what has transpired in prior proceedings involving the same petitioner, the Court's continued participation would, for reasonable persons, raise serious questions about its impartiality in adjudicating the claims in this case. Because of this, in keeping with the teachings of our Court of Appeals and the United States Supreme Court, the proper course is for the Court to recuse itself and to direct the Clerk to reassign this matter to another member of this Court.

WHEREFORE, respondents respectfully submit that the Court should recuse itself and

should direct the Clerk to reassign this action to another member of this Court.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

WILLIAM H. RYAN, JR.
Executive Deputy Attorney General
Criminal Law Division

ROBERT A. GRACI
Assistant Executive Deputy Attorney General
Law and Appeals

By: _____

AMY ZAPP
Senior Deputy Attorney General
Capital Litigation Unit
Attorney I.D. No. 28065

OFFICE OF ATTORNEY GENERAL
Capital Litigation Unit
16th Floor - Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 783-7128
FAX: (717) 783-5431
E-MAIL: azapp@attorneygeneral.gov

JEROME T. FOERSTER
Senior Deputy Attorney General
Appeals and Legal Services Section

JONELLE L. HARTER
Deputy Attorney General
Capital Litigation Unit

DATE: June 14, 2001

Counsel for RESPONDENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA MICHELLE LAMBERT,	:	
Petitioner	:	**CIVIL ACTION NO. 01-CV-2511**
v.	:	
	:	
CHARLOTTE BLACKWELL,	:	**(JUDGE DALZELL)**
SUPERINTENDENT, *et al.,*	:	
Respondents	:	

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL OF ASSIGNED JUDGE

I. Introduction

This is an action in *habeas corpus* brought pursuant to 28 U.S.C. § 2254 by Pennsylvania prisoner Lisa Michelle Lambert, who was convicted of first degree murder and sentenced to life imprisonment in the December 20, 1991, killing of 16 year old Laurie Show of Lancaster, Pennsylvania.[1] Previously, Lambert filed a petition for writ of *habeas corpus* which was granted by this Court.[2] *Lambert v. Blackwell*, 962 F.Supp 1521 (E.D. Pa. 1997). However, the Third Circuit Court of Appeals, in the appeal which followed from that ruling, vacated the Court's order granting relief, after determining that she was obliged to seek review of her claims in state court, something she had bypassed in filing her prior case. *Lambert v. Blackwell*, 134 F.3d 506 (3d Cir. 1997),[3] *cert. denied*, ___ U.S. ___, 121 S.Ct. 1353 (2001).

Following the Third Circuit's decision, Lambert initiated proceedings in state court seeking

---

[1]Lambert is presently serving her sentence in a New Jersey penal institution.

[2]That action was docketed at No. 96-CV-6244 (E.D. Pa.) and will be hereinafter to as "*Lambert I*" or by its docket number. Various materials referenced in the discussion, *infra*, are included in the appendices which are bound with this motion. Docket entries for *Lambert I* appear in Appendix A.

[3]The appeal was docketed in the Third Circuit at Nos. 97-1281, 97-1283 and 97-1287.

relief pursuant to the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541 *et seq.* Most recently, on December 18, 2000, the Pennsylvania Superior Court affirmed the denial of her application for relief by the Lancaster County Court of Common Pleas on August 24, 1998. *Commonwealth v. Lambert*, 765 A.2d 306 (Pa. Super. 2000).[4]

On May 21, 2001, Lambert began this new *habeas* action. Respondents are this day moving, pursuant to 28 U.S.C. § 455(a), for recusal of the judge to whom this matter has been assigned. Respondents maintain that, because of what transpired in connection with Lambert's prior attempt to secure *habeas* relief, a reasonable person would question the Court's impartiality in this new matter and therefore the Court should recuse itself. This memorandum is submitted in support of that motion.

II. Relevant Facts & Procedural History

1. Lambert began her previous *habeas* action, *i.e.*, No. 96-CV-6244, on September 12, 1996, with the filing of a *pro se* petition for such relief. *See* Appendix A (Petition, filed Sept. 12, 1996)(Record Document 1).[5]

2. The Court appointed counsel, who filed an amended petition on January 3, 1997, along with a motion to conduct discovery. *See* Appendix A (Record Documents 5 and 6). Three days later, before respondents had made any response to the petition, the Court scheduled a status conference for January 15, 1997.[6] *See* Appendix A (Record Documents 7 and 8). During that

---

[4]The decision of the court of common pleas which was affirmed by Superior Court is not officially reported but may be found on WESTLAW at 1998 WL 558749 (Pa.C.P. Aug. 24, 1998).

[5]In this section, citation is to documents of record in No. 96-CV-6244, unless otherwise indicated.

[6]Under the local rules for this District, *habeas* corpus cases filed pursuant to 28 U.S.C. § 2254, such as this one, typically are exempt from the provisions of Fed.R.Civ.P. 16(b) which

conference, without having received and reviewed a response to the petition, the Court granted Lambert's motion for discovery, and following the conference, issued an order to such effect. *See* Order of Jan. 16, 1997. *See* Appendix A (Record Document 15). In other orders issued the same day, the Court scheduled a second status conference for February 13, 1997, the day after the response to the petition was due, and again before any response to the petition had been filed or reviewed, the Court specially listed this case for a hearing to begin March 31, 1997. *See* Appendix A (Record Documents 14 and 16).

3. During the January 15, 1997, conference, when counsel for respondents attempted to point out that decisions on discovery and whether a hearing will be held should be made upon a review of the pleadings filed by both parties, and after the issue of exhaustion was addressed, the Court cut her off mid-sentence, telling her she was "dead wrong," (Tr. 1/15/97 Status Conference at 31),[7] that in the "unusual circumstances . . . that exist here, I think that's simply wrong . . . ." (*Id.* at 31-32)

4. Respondents filed their answer to Lambert's amended petition on February 12, 1997, in which they formally and properly raised, as a defense, that Lambert, a state prisoner, had failed to exhaust her state remedies before commencing her *habeas* action as required by federal law, *see* 28 U.S.C. § 2254(b). *See* Appendix A (Answer to Petition at pp. 4-20)(Record Document 20).

---

mandate the issuance of a scheduling order fixing important case-related deadlines including dates for conferences with the Court and evidentiary proceedings. *See* L.R.E.D.Pa. 16.2(2). The local rule's exemption of *habeas* cases is consistent with the provisions of the special rules of procedure for *habeas* cases, which typically require that a court defer any decision about further proceedings until the petition and response thereto have been reviewed. *See, e.g.*, Rule 8(a) (for Section 2254 Cases).

[7]Relevant portions of the transcript referenced appear in Appendix B.

5. The day following the filing of the answer to the petition,[8] the Court convened a second status conference as previously scheduled, *see* ¶ 2, *supra*, at which time, respondents again raised the exhaustion issue, asserting that it was a threshold ruling the Court needed to make before proceeding any further. (Tr. 2/13/97 Status Conference at p. 50, 55-62)[9] Once again, citing the "highly unusual circumstances" it considered to exist, the Court did not proceed to rule on that procedural issue. (*Ibid.*)

6. Rather, it permitted Lambert to continue to conduct extensive discovery, including nearly 60 depositions, appointed numerous experts at public expense, *see, e.g.,*Order of Feb. 13, 1997 (Record Document 24)(provisionally approving compensation in excess of $1000 for each of several experts).

7. Beginning on March 31, 1997, the Court convened a hearing on the merits of some of the claims Lambert had raised, a proceeding which ultimately spanned three weeks. Prior to the completion of those proceedings, and before respondents had presented their case, it released Lambert to the custody of her attorneys. *See* Order of April 16, 1997 (Record Document 68).[10]

---

[8]The answer filed was voluminous, consisting of a pleading of 89 pages to which 674 pages of record material were attached as exhibits.

[9]Relevant portions of the transcript referenced appear in Appendix C.

[10]As issued, the Court's order reflected that respondents had agreed that petitioner was entitled to immediate interim relief, and that was accurate at the time the order was entered. However, that concession was withdrawn the next day, (Tr. Of 4/17/97 at 2791)(which may be found in chronological order in Appendix D, along with other portions of the hearing on the merits in *Lambert I*, which are cited, *infra*), something to which the Court of Appeals, would point out in the ensuing appeal, the Court had not given appropriate attention or effect. 134 F.3d 506, 511 n. 11.

At the time respondents withdrew their agreement, the District Attorney, who was then representing them, moved for the Court's recusal, citing *inter alia*, the fact that the Court had expressed the view very early in petitioner's case--beginning on the third day of testimony to be specific--that certain witnesses were committing perjury. *See* Appendix D (Tr. Of 4/17/97 at 2789-2791). In denying that motion, the Court, which just the day before had praised the District Attorney for his candor and ethical behavior, said that it "had thought that [the District Attorney] and his

8. The same day, again before respondents had an opportunity to present their case, the Court also entered an order barring the assistant district attorney from Lancaster County who had prosecuted Lambert's case, and seven police officers who had worked on it, from entering the federal courthouse.[11] *See* Order of April 16, 1997 (Record Document 70).

9. The first business day after the hearing had ended, the Court issued a ninety-page opinion, in which it condemned, in the strongest terms possible, Lambert's prosecution and conviction in the Lancaster County Court of Common Pleas, concluding that, in terms of prosecutorial misconduct, it had no peer in the annals of English-speaking jurisprudence. *See* 962 F. Supp. 1521, 1550 n. 42 (E.D. Pa. 1997).

10. The Court's opinion not just discredited--but repeatedly railed--at the testimony of police witnesses and the assistant district attorney who had prosecuted Lambert, at times calling what it heard from them "lies" and "perjury." *See, e.g.*:

<<< *id*. at 1541 ("[Det.] Barley committed perjury at Lisa Lambert's trial and [Officer] Reed almost certainly committed perjury before us and at his deposition");

<<< *id*. at n. 31 ("Barley's apparent perjury continued, in our view, in his testimony before us . . .");

<<< *id.* at 1542 ("[i]n some of his fantastic testimony before us, Chief Detective Solt claimed . . .");

<<< *id.* at n. 32 ("[t]here is a line in a witness's testimony between

---

colleague [*i.e*, his co-counsel in the *habeas* case] were in a different class than what we've heard before, and I regret to say that I have to reconsider that view." *See* Appendix D (Tr. of 4/17/97 at 2795).

[11]The Court's order which it communicated personally to the U.S. Marshal's Office, was not limited just to barring these individuals from the proceedings before it but rather the entire premises at all times until further notice. It failed to consider that the banned individuals, police officers and an assistant district attorney, might have other, unrelated business in the same location.

exaggeration and perjury. Chief County Detective Solt's testimony . . . seems to us to have gone well beyond that line . . .");

<<< *id.* at 1546 (referring to "a moment of unguarded candor" on the part of a medical expert presented by respondents);

<<< *id.* at 1547 ("[n]othing can equal Mr. Kenneff's steadfast refusal to retract his lies to us about the use of 'pencil' on the '29' Questions, both under oath on the witness stand . . . and in his assertions . . . [in] Respondent's Answer");

<<< *id*. at 1549 (calling the assistant district attorney's testimony relative to a *Brady*[12] issue "a fantasy");

<<< *id.* at 1550-51 (where the court summarized what it said were "so many instances of grave prosecutorial [and other] misconduct");

<<< *id.* at 1548 ("[a]gain, Mr. Kenneff was indifferent to the law, because it impeded his conviction of Lisa Lambert").

11. The Court said that it had determined that there were

> at least twenty-five separate instances of such misconduct. In our view, a District Justice of the Commonwealth of Pennsylvania, former Detective Savage, may have committed perjury before us and obstructed justice in 1992. . . . Other witnesses in the state capital murder trial, including Chief County Detective Solt, Detective Barley, Lieutenant Renee Schuler, and Officers Weaver, Reed and Bowman, fabricated and destroyed crucial evidence and likely perjured themselves in the state proceeding. At least six seemed to perjure themselves before us. Agents of the Commonwealth intimidated witnesses both in the capital murder trial as well as in this habeas corpus proceeding. The prosecutor who tried the *Lambert* case and sought [her] execution knowingly used perjured testimony and presided over dozens of *Brady*-*Giglio*[13] violations, may have committed perjury, and unquestionably violated the Rules of Professional Conduct before our very eyes.

Id. at 1550. It went on to say that

---

[12]*Brady v. Maryland*, 373 U.S. 83 (1963).

[13]*Giglio v. United States*, 405 U.S. 150 (1972).

> as to District Justice Savage and First Assistant District Attorney Kenneff, Chief County Detective Solt, Detective Barley, Lieutenant Schuler and Officers Weaver, Reed and Bowman, as well as the others in active connivance with them, we can only say that they should have known better than what they did--and tried to do--to Lisa Lambert.

Id. at 1553.

12. What's more, at its end, the opinion proceeded to take the greater Lancaster community to task saying that it had

> closed ranks behind the good family [of victim Laurie] Show and exacted revenge against this supposed villainess . . . In making a pact with this devil, Lancaster County made a Faustian Bargain. It lost its soul and it almost executed an innocent, abused woman. Its legal edifice now in ashes, we can only hope for a *Witness*-like barn-raising of the temple of justice.

Id. at 1555.

13. The Court did not simply reject the testimony of the assistant district attorney and police witnessed mentioned, *supra*, but it referred these individuals for investigation by the United States Attorney and/or judicial and attorney disciplinary authorities in Pennsylvania.[14] In its opinion, the Court identified the various criminal charges which it believed the U.S. Attorney should investigate: "witness intimidation, apparent perjury by at least five witnesses in a federal proceeding, and possible violations of the federal criminal civil rights laws." *Id.* at 1550. Elsewhere, in its opinion,

[14]Repeatedly, throughout its opinion, the Court referred to what it called the prosecutor's "blatantly unethical (and unconstitutional) actions," 962 F.Supp. at 1550, and said that there had been "indubitable violations of Fed.R.Civ.P. 11 and of the Rules of Professional Conduct . . . ." *Id.* at 1551. It wrote disparagingly of "the degree of Mr. Kenneff's bravado and incorrigibility on the issue of [certain of his ethical obligations] . . . was dramatically illustrated . . ." during testimony he gave at the *habeas* hearing. *Id.* at 1540. *See also id.* at 1547 n. 39 (where the Court lists various examples of the prosecutor's alleged indifference and/or "egregious misconduct" relative to his ethical obligations and refers to what it says was his "animus before us in pre-trial proceedings," which, it said, "suggest[ed] not only a lack of remorse but incorrigibility").

the Court mentioned "obstruction of justice," as well as the fabrication and/or destruction of evidence. *Id.* at 1551.[15]

14. In equally emphatic terms, the Court credited the testimony of Lambert as exuding "punctilious honesty," *id.* at 1534, ultimately concluding that she was actually innocent of Laurie Show's murder, *id.* at 1528-1535, 1551, and that "virtually all of the evidence which the Commonwealth [had] used to convict [her] of first degree murder was either perjured, altered, or fabricated." *Id.* at 1550. "The fact is," it said, "the Commonwealth rigged the proceedings in the state trial to such an extent that it was a trial in name only." *Id.* at 1551.

15. Lambert was, in the Court's words, "first and foremost" of victims for whom "the long nightmare that began in her teens is ending," and commented that it would, "take much more than the granting of her petition to heal the wounds and banish the demons that have for so long hurt and haunted her." *Id.* of 1552.[16]

16. On appeal from this Court's order granting Lambert relief in *habeas corpus*, the Third Circuit concluded that the Court had erred in entertaining her petition; that she was obliged to exhaust her state remedies prior to proceeding in federal court. *See* 134 F.3d 506 (1997).

17. The Court of Appeals vacated this Court's order and remanded with the direction that it dismiss Lambert's petition without prejudice. *Id.* at 525.

18. The Court eventually did this on February 3, 1998, *see* Appendix A Order of Feb. 3,

---

[15]Contrary to the Court's impassioned assessment of their purportedly criminal and/or unethical misbehavior, those investigations did not reach the same conclusions. No charges, criminal, disciplinary, or otherwise, were ever initiated against any of the individuals castigated in the Court's opinion.

[16]While the Court included Hazel Show and her family and the citizens of Lancaster county in cataloguing other "victims" in this case, nowhere did it make any mention of the young woman who had died so horribly, Laurie Show. 962 F.Supp. at 1552.

1998)(Record Document 131), but not before requiring the parties to submit briefs addressing several questions, including whether or not it was precluded, by Third Circuit's ruling vacating its judgment and directing dismissal of the petition, from taking further action in the case. *See* Appendix A (Order of January 30, 1998)(Record Document 129).

19. Lambert filed a petition in state court on February 2, 1998, seeking post-conviction relief in connection with which a hearing was begun on April 30, 1998 in Lancaster County Court of Common Pleas. *See Commonwealth v. Lambert*, No. 423-1992 (Lanc. Co.).

20. She filed a motion in the Third Circuit asking for release on bail during the pendency of the petition for *certiorari* she had filed with the United States Supreme Court seeking review of the Third Circuit ruling vacating the Court's decision on her *habeas* petition.[17]

21. While the state court post-conviction proceedings, for which Lambert was present in Lancaster, PA, were ongoing, on May 6, 1998, a two-judge panel of the Third Circuit issued an order granting an application Lambert had filed with it seeking her release on bail during the pendency of petition for writ of *certiorari* she had filed in the United States Supreme Court. The Court of Appeals' order also provided that the matter was remanded to this Court for consideration of the terms and conditions of Lambert's release. *See* Appendix E (where a copy of the order appears). 22. An hour after the issuance of the Third Circuit's order, without contacting the state court conducting the post-conviction proceedings, this Court faxed an order fixing a hearing on bail for May 8, 1998, and issued a writ directing respondents to deliver her immediately to the custody of the Court in Philadelphia. *See* Appendix E (where a copy of that order appears).[18]

---

[17]Lambert's petition was filed in the Supreme Court on April 28, 1998.

[18]As the various record documents arranged in chronological order in Appendix E reflect, the Court of Appeals' ruling was faxed at 16:59 hours on May 6, 1998; this Court's order setting a

Lambert was moved on May 7, 1998, in accordance with that order and a subsequent order of May 7, 1998, (Record Document 135), clarifying that Lambert was to be delivered to representatives of the U.S. Marshal's Office.

23. Later on May 7, 1998, however, the Court of Appeals stayed the May 6, 1998, order of the two-judge panel pending the filing of a petition for rehearing *en banc. See* Appendix E. Though this order was personally delivered to this Court's chambers at once by staff from the Court of Appeals, and was reviewed, the Court nevertheless still required the parties to appear as scheduled the next morning.

24. The Court of Appeals subsequently granted rehearing, vacated the panel order of May 6, 1998, which had granted Lambert bail, and denied her application. *See* Orders of May 15, 1998 and August 3, 1998 (3d Cir.)(copies appear in Appendix E).

25. On August 24, 1998, after eight weeks of testimony by nearly 100 witnesses and hundreds of exhibits, the state court denied Lambert's petition for post-conviction relief. In its 323-page opinion, claim after claim, it rejected Lambert's allegations in no uncertain terms, including claims that this Court had seen her way, pointing out in several instances, that when this Court had ruled in her favor it had less than the complete picture. *Commonwealth v. Lambert*, 1998 WL 558749 (Pa.C.P. Aug. 24, 1998).

26. On September 21, 1998, Lambert appealed to the Superior Court of Pennsylvania.

27. On March 29, 1999, when she served her brief on the merits in that appeal, she also filed a petition in this Court asking leave to file a second amended *habeas* petition. *See* Appendix A

---

bail hearing for May 8, 1998--and ordering her immediate transfer "to the custody of the Court"--was faxed at 17:55 hours. *See* Appendix E. It appears that this latter order is not docketed correctly in this case. Although it was issued and is dated May 6th, the docket reflects its issuance and entry on May 7th. *See* Appendix A (Record Document 134).

(Record Document 145). In this new petition, Lambert asserted that she should be permitted to proceed in federal court based on the "futility" exception to the exhaustion requirement, *see* 28 U.S.C. § 2254 (b)(1)(B)(i), asserting that she could not get a fair hearing of her claims in the Commonwealth's courts, making exhaustion of state remedies a futile exercise.

28. The very next day, on March 30, 1999, the Court directed respondents to reply to what Lambert had filed by April 15, 1999. *See* Appendix A (Record Document 146). When they did, they pointed out, *inter alia*, that the Court did not have any authority to entertain Lambert's request; put simply, given the Third Circuit's clear instruction to dismiss her petition, there was nothing to amend. Likewise, given the Third Circuit's ruling that Lambert must exhaust state procedural options, which is now the law of the case, she may not initiate another premature action in *habeas*. Respondents also explained to the Court in a supplemental filing that, given the way in which Lambert had structured her new pleading, it appeared to be a second or successive petition which was subject to the "gatekeeper" provisions instituted by the Anti-Terrorism and Death Penalty Act ("AEDPA"), *see* 28 U.S.C. § 2244(b)(3)(A)-(E), which requires her to apply successfully to the Court of Appeals for leave to proceed before this Court could entertain it. The Court took no action on Lambert's motion.

29. On December 18, 2000, the Superior Court of Pennsylvania ruled on Lambert's appeal from the denial of her application for PCRA, and affirmed the denial of the same. *Commonwealth v. Lambert*, 765 A.2d 306 (Pa. Super. 2000). Superior Court said that her petition was untimely, something that a decision of the Pennsylvania Supreme Court which was issued during the pendency of her PCRA case said was jurisdictional, and also concluded that, with respect to all of the nearly 200 claims she was pursuing in that matter--the vast majority of claims which were identical to those in her previous *habeas* case in this Court--there was no basis for relief. In affirming the PCRA

court's conclusion to such effect, notably, in connection with some of the claims of police and prosecutorial misconduct that had won so much favor in this Court, Superior Court pointed out that the PCRA court had thoroughly considered all that Lambert had proffered in the PCRA proceedings including what Superior Court described as Lambert's "most exaggerated and preposterous suppositions and extrapolations." *Id.* at. ¶ 48.[19]

30. On January 29, 2001, Lambert filed a request that the Court permit her to file a third amended *habeas* petition. *See* Appendix A (Record Document 154). Once again, the very next day, this Court ordered the parties to submit their views as to whether this may be entertained and the parties did this on February 16, 2001. *See* Appendix A (Record Document 155). As they previously had said in response to Lambert's request to file a second amended petition, respondents reiterated that there was no longer any petition to be amended since it had been dismissed with prejudice by the Court on February 3, 1998, as directed by the Court of Appeals. They also pointed out that, given the pendency of the petition for *certiorari,* the Court could not act on Lambert's motion.

31. On February 21, 2001, the Court issued a memorandum which indicated that it would defer any action on that request pending a ruling by the U.S. Supreme Court on the Lambert's petition for *certiorari*. *See* Appendix F (where a copy of that order appears).

32. On February 23, 2001, the respondents in *Lambert I* moved for the Court's recusal.[20]

---

[19]Because internal pagination is not presently available in the officially reported version of the decision, we cite to the numbered paragraph in Superior Court's opinion in which the quoted language appears.

[20]Respondents' motion indicated (at p. 2 n.3 of the supporting memorandum filed with the motion) that it was being filed to put the issue before the Court when and if the matter returned to it. At the time the motion was filed, the petition for *certiorari* was still pending and, accordingly, there existed the possibility that the matter might return to the Court as the result of action by the Supreme Court on the same.

33. On March 19, 2001, the Supreme Court denied Lambert's petition for *certiorari*.

34. Notwithstanding the fact that *Lambert I* was conclusively ended by that action,[21] the Court, on April 20, 2001, proceeded to rule on the recusal motion, denying it. *See* Appendix G (where a copy of the Court's ruling appears).

35. On April 30, 2001, respondents filed a motion for reconsideration of the Court's order of April 20, 2001, in which they pointed out that, at the time the Court acted on the recusal motion, it had become moot since the denial of petition for *certiorari* had terminated *Lambert I*.

36. On May 11, 2001, the Court declined to vacate its ruling, eschewing "whatever technical merit [their motion] might have . . . ." *See* Appendix H (where a copy of that order appears), slip op. at p. 4, ¶ m.

[21]Because the mandate had issued following the Third Circuit's *vacatur* of the Court's ruling granting relief, and had been acted on, there was no reason for the case to return to this Court following the denial of *certiorari*.

III. Argument

This Court Should Recuse Itself Because What Has Transpired in Prior Litigation Involving This Petitioner Unquestionably Serves to Raise Serious Questions In Reasonable Minds About the Impartiality of the Adjudication of The Claims in This Matter.

"The right to trial by an impartial judge 'is a basic requirement of due process.' " *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 98 (3d Cir. 1992)(quoting *In Re Murchison*, 349 U.S. 133, 136 (1955)).

> Impartiality and the appearance of impartiality in a judicial officer are the *sine qua non* of the American legal system. In *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 . . . (1968), the United States Supreme Court stated: [A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even *the appearance* of bias. 671 F.2d at 789.

Haines, 975 F.2d at 98 (quoting *Lewis v. Curtis*, 671 F.2d 779, 789 (3d Cir.), *cert. denied*, 459 U.S. 880 (1982))(citations in original; emphasis added).

Not long ago, this Court reiterated the importance of not only this core principle of our justice system, but also the importance of vigilance on the part of the bar, as guardians of the public interest, saying that: "Judges are public figures and their impartiality and ethics are matters of profound public concern. Lawyers are the sentries for the public when they detect judges' breaches of these minimal standards." *In the Matter of Robert B. Surrick*, 2001 WL 120078, *16 (E.D. Pa. Feb. 7, 2001)(Dalzell, J., concurring)(footnote omitted).[22]

Whether a jurist is actually "incapable of discharging judicial duties free from bias or prejudice . . . is not the test." *Haines, supra*, 975 F.2d at 98. "[R]ather, the polestar is '[i]mpartiality and the appearance of impartiality.' " *Ibid.* (quoting *Lewis, supra*, 671 F.2d at 789). That the public

[22]Internal citation as on WESTLAW.

perceive the judicial process as fair and impartial is of paramount importance. *See, e.g., Liteky v. United States*, 510 U.S. 540, 554 (1994); *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 167 (3d Cir. 1993); *Haines*, 975 F.2d at 98. And therefore a court must "preserve not only the reality but also the appearance of the proper functioning of the judiciary as a neutral, impartial administrator of justice." *United States v. Torkington*, 874 F.2d 1441, 1447 (11th Cir. 1989)(quoted in *Primerica, supra*, 10 F.3d at 167, and *Haines, supra*, 975 F.2d at 98). "When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced." *Primerica, supra*, 10 F.3d at 166.

While the conduct with respect to which a request for judicial disqualification is being sought typically "must involve an extrajudicial factor," *U.S. v. Antar,* 53 F.3d 568, 574 (3d Cir. 1995)(citing *Liteky, supra*), both our Court of Appeals, and the United States Supreme Court, have also recognized, this is not an absolute rule; there are circumstances when "opinions formed during a judicial proceeding may in certain instances give rise to a duty to recuse." *Ibid.* (quoting *United States v. Bertoli*, 40 F.3d 1384, 1412 (3d Cir. 1994). *Accord Liteky*, 510 U.S. at 550 (where the court cited as an example a situation where, in the course of a trial, a judge acquires a hatred for one of the parties); *Primerica, supra* (where the events which compelled recusal were part of the case). In such instances, for case-based conduct to be seen to evince improper bias or prejudice, "the court's actions 'must reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.' " *U.S. v. Antar, supra*, 53 F.3d at 574 (quoting *Liteky*, 510 U.S. at 555).

In determining if this line has been crossed, the question is not whether the jurist is actually laboring under a bias or prejudice for or against a party, *see Bertoli, supra*, 40 F.3d at 1412, but rather, "if a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality . . . ." *U.S. v. Antar*, 53 F.3d at 574 (quoting *Potashnick v. Port City Constr.*

Co., 609 F.2d 1101, 1111 (5th Cir.), *cert. denied*, 449 U.S. 820 (1980))(other citations omitted). *Accord Primerica, supra*, 10 F.3d at 164 (" . . . the appropriate--and the only--inquiry . . . is 'whether a reasonable person, knowing all the acknowledged circumstances, might question the district court judge's continued impartiality")(quoting *In Re School Asbestos Litigation*, 977 F.2d 764, 781 (3d Cir. 1992)). "Congress enacted [28 U.S.C. §] 455(a) precisely because 'people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.' " *In Re School Asbestos Litigation*, 977 F.2d at 782 (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864-65 (1988)).

We submit that any reasonable person, aware of all that has occurred in the course of the prior litigation involving this petitioner, could not help but harbor doubts--and serious doubts at that--about the Court's impartiality in this new action. Indeed, rare would be the person who would *not* question the Court's ability to be impartial in light of what it has previously said and done. Precisely the same problem that warranted reassignment of the trial judge in *Primerica, supra*, is present here, *i.e.*, "that the outcome of this case 'would be shrouded [in] suspicion' if [the assigned judge] were to continue to preside as trier of fact," 10 F.3d at 163 (quoting *In Re School Asbestos Litigation, supra*, 977 F.2d at 785), and there is even more reason than there was in that case to believe that reasonable persons would question the Court's impartiality.

For, the record in *Lambert I* shows that, from the earliest moments of that case, the Court departed from procedural norms in *habeas* cases, granting discovery and setting a hearing date, things which favored the petitioner, without even waiting to receive the respondents' answer to the petition, something the procedural rules instruct it to do. *See* Rule 8(a)(for Section 2254 cases). The Court's treatment of the matter, as extraordinary, and thus warranting deviation from well-settled exhaustion rules, from the start--before even considering the contents of a responsive pleading,

would be troubling to a reasonable observer. Surely, this could be seen to raise questions of prejudgment notwithstanding any of the Court's disclaimers about having made up its mind about anything. Its actions, to a reasonable observer, might fairly be seen to tell a different story. At the time the Court permitted petitioner to embark on her wide-ranging and expensive discovery campaign, and at the time it set a not too distant hearing date, the only things before the Court were the *allegations* being made by *one* side in this litigation.[23] It had not even afforded the respondents the most basic of due process rights, *i.e.*, the opportunity to respond to the many averments contained in the petition and to present their views about the viability of the merits of the claims in it before it made these critical rulings which imposed such great obligations on them. A reasonable person might take from the undue speed with which the Court acted in this regard that the Court simply wasn't interested in what respondents had to say and that whatever they said would be of absolutely no import; that the Court had *already* accepted, as true, at least some of what was being alleged by petitioner.

But even if that were not the case, the hyperbole with which this Court repeatedly infused its decision in the matter--calling it a case of injustice without peer in the English-speaking world, for example--more than suffices to raise questions about the Court's ability to see things any other way. The vehemence of its ruling on the merits undoubtedly would make it very difficult for any reasonable person to believe that the Court can start with a clean slate in considering respondents'

---

[23]From January 8, 1997, a few days after the first amended complaint had been filed, until February 7, 1997, the Court received a series of correspondence, either directly or as the result of being copied, which echoed the allegations in that petition, *i.e.*, that Lambert was innocent, that prosecutors were withholding important information/evidence, *etc*. *See* Appendix I (which contains copies of the correspondence). A reasonable person might see these communications as having affected the court's perception of this case and contributing to its vehemently negative views of respondents' witnesses and evidence.

position in this litigation. What reasonable person would seriously think that, given the Court's prior, emphatic view of the facts and claims--a view which discredited many of respondents' witnesses so completely and embraced petitioner's contentions so wholeheartedly--respondents could, let alone would, now receive a fair hearing in this case which covers so much of the same ground? After all, as detailed, *supra*, the Court repeatedly called many of the witnesses whose testimony figures critically in respondents' defense of this action liars, perjurers and conspirators and even went so far as to refer them for prosecution as criminals and/or for professional discipline.[24] In light of this, reasonable persons could believe that the Court is possessed of very firmly-held opinions about the credibility--or lack thereof--of witnesses and evidence which figure importantly in respondents' defense of this case. We submit that reasonable persons would question whether these individuals--previously seen by the Court as parties to "a Faustian Bargain," 962 F.Supp. at 1555--could now be viewed as anything else.

Similarly, given the Court's strongly expressed convictions concerning Lambert's innocence and her victimization, it would be exceedingly difficult to convince any reasonable person that the Court could not now be affected by these things. After the Court's having seen Lambert as the victim of the greatest injustice in the annals of English-speaking jurisprudence; after it has allowed

---

[24]In some instances, the Court did this--or took other action of an adverse nature against respondents' witnesses *before* the testimony in the case was completed; indeed, before the testimony in *petitioner's* case was completed. *See* Appendix D(Tr. 4/2/97 at 633-637)(where just three days into the hearing the Court expressed the view that it was hearing perjured testimony); *id.* (Tr. at 2704-2710)(where the Court directed counsel for respondents to report the Pennsylvania District Justice who was testifying to state judicial disciplinary authorities); and Appendix A (Order of Apr. 16, 1997)(Record Document 70)(barring eight individuals from courthouse)). In *Primerica*, the Third Circuit said that reasonable persons might question the impartiality of a judge who, before all the evidence was received in a case, had expressed the view that certain witnesses may have committed perjury and should be referred for possible investigation by a grand jury. 10 F.3d at 164.

that it will "take much more than the granting of her petition to heal the wounds and banish the demons that have for so long hurt and haunted her," 962 F. Supp. At 1552; after it has so dramatically exonerated her saying it "was as though [she was] delivered from Central Casting for the part of villainess," *id.* at 1555, what reasonable person would not have questions or be skeptical about the Court's ability to be impartial here?

Because, as a *habeas* case, this is a non-jury proceeding, and the judge is therefore tasked with deciding both legal and factual issues, increases the importance of ensuring that the public's perception of judicial integrity. As *Primerica* points out, *see* 10 F.3d at 163, in situations where the record reflects events or occurrences which might generate doubts about the impartiality of the sole arbiter of a dispute, it can be particularly difficult "to defuse, quiet or overcome" suspicions of the public and others relative to the court's rulings. *Id.* This consideration, too, bespeaks the need for recusal in this case.

What reasonable person would believe that the Court could not be influenced by its prior evaluation of the evidence and witnesses when making rulings in this case, not just on substantive questions, but also when it comes to important threshold procedural issues likely to be involved here, such as whether Lambert has made an adequate showing of "actual innocence" so as to be able to overcome procedural default. *See generally Wainwright v. Sykes*, 433 U.S. 72 , 87 (1977); *Schlup v. Delo*, 513 U.S. 298 (1995). Even if the Court were capable of divorcing itself from its strongly-voiced conclusions and could render rulings free from the influence of its prior assessment-- something about which we express no view as the Court's ability to do this since it is not part of the calculus, *see Bertoli, supra*--any rulings made by the Court which favored Lambert would nevertheless be "shrouded in suspicion" in reasonable minds given the Court's prior determinations.

Given this Court's past, vehement proclamation that Lambert was actually innocent of the crime of which she was convicted, what reasonable person could not help but have grave doubts about the Court's impartiality concerning any ruling in this case that she had made an adequate showing of "actual innocence" so as to avoid procedural default? Accordingly, the Court should, in the interest of ensuring public confidence in the outcome of this litigation, withdraw from participating.

Also, given the repeated rejection of this Court's prior appraisal of Lambert's claims by the state courts, and the various investigatory bodies to whom such referral for prosecution or professional discipline was made, what reasonable person would not wonder if any continued participation by the same jurist might be influenced by concerns other than the evidence? Reasonable persons, we believe, might question if the Court was motivated by a desire to correct perceived "errors" by those bodies.

Certainly, the memorandum the Court issued on February 21, 2001, in *Lambert I*, would raise questions in reasonable minds about the Court's ability to function impartially in this litigation. The manner in which the Court recounted developments in *Lambert I* in that memorandum, saying, for example, that "with the Commonwealth of Pennsylvania's agreement that 'relief is warranted'," slip op. at 1; and "[o]ver the dissent of Judge Roth, which was joined in by three other Court of Appeals judges, the Court of Appeals on January 26, 1998 denied Ms. Lambert's petition for rehearing *en banc*," slip op. at 2, can be seen to give the strong impression that the Court is operating with a firmly-entrenched view of the facts and claims since the Court has chosen to focus on things--such as dissents by members of the Court of Appeals[25]--which accord with its assessment and to ignore

[25]The Court not only mentioned the dissent relative to rehearing of the appeal which followed this Court's ruling on the merits of this case, but also the dissent expressed relative to the Court of Appeals' *en banc* decision denying Lambert bail pending action on her petition for certiorari. *See*

other, more important things which don't, *e.g.*, the fact that *twice* as many members of the Court of Appeals did *not* vote for rehearing in the appeal which vacated the Court's ruling. *See* 134 F.3d at 525 (listing the judges who participated relative to the request for rehearing).

There is also the fact that misconduct charges have been filed against the Court with the Third Circuit by one of the individuals whose testimony figures centrally in this case--Hazel Show. *See* J.C. No. 99-50 (3d Cir. Feb. 22, 2000)(a copy of which is appears in Appendix J). In mentioning this we do not mean to suggest that simply because someone associated with a case files a complaint against a presiding judge, it automatically follows that reasonable persons would question the judge's impartiality. But in this instance, observations by the Court of Appeals in its decision lends additional support for the notion that reasonable persons would question the legitimacy of the Court's involvement. For although the Court of Appeals ultimately dismissed this complaint, it nevertheless observed that, in some places, language used by the Court in its opinion in *Lambert I* was "hyperbolic and overly dramatic, as well as intemperate." *Id.,* slip op. at 4. Those remarks, which obviously recognize that the Court was possessed of extremely strong views on certain issues, indicate that, at times, the Court's opinion exceeded what was called for. Such an assessment by one trained in the law and therefore mindful of the fact that judicial opinion-writing is to be afforded a great deal of expressive latitude is of no small consequence. Rather, it serves to show how much

---

slip op. at 7 (referring to "the release we ordered on April 16, 1997, confirmed on April 21, 1997, and that five members of the Court of Appeals were prepared to give her on August 3, 1998"). In fact, there were only three dissenting votes on the ruling denying bail. *See* Opinion filed at Nos. 97-1281, 97-1283 & 97-1287(3d Cir., Aug. 3, 1998)(*en banc*)(Stapleton, Roth and McKee, JJ., dissenting). This number constituted less than one-third of the ten judge *en banc* court, which decided the issue. The Court's opinion also indicates that the matter was considered *en banc* by the Third Circuit *sua sponte*. Rather, respondents applied for *en banc* review with that Court on May 8, 1998.

easier it would be for a reasonable citizen, not possessed of the brakes acquired in the course of legal training, to see in what the Court has said in its decision in *Lambert I* unshakable opinions about the issues, witnesses and evidence and, as a result, to have little or no confidence in the Court's ability to be impartial in this case.

Moreover, the swiftness with which the Court has repeatedly acted with regard to matters initiated by Lambert in the wake of the Third Circuit's reversal of its ruling, particularly her application for bail, could not help but cause a reasonable person to wonder if the Court isn't "chomping at the bit" to assist her, and to reinstate its prior ruling granting her relief. So would the Court's actions relative to the recusal motion filed in *Lambert I*, *i.e.*, ruling in a case that was clearly over--a case in which recusal had become a moot point. A reasonable person, aware of all that has occurred, might believe that the Court cares too much about Lambert's claims and that, as the Third Circuit put it in *Primerica*, 10 F.3d at 164, the Court "has apparently not receded in his view" of the proper disposition of them. In short, this is one of the rare cases in which developments arising in the course of litigation warrant recusal; reasonable persons could believe from all that has gone before that the Court has developed a "deep-seated and unequivocal antagonism [concerning respondents' witnesses] that would render fair judgment impossible." *Litkey*, 510 U.S. at 556.

Unquestionably, this case has garnered a great deal of public attention and has spawned some highly unusual developments.[26] In mentioning this, let us state clearly that we are *not* maintaining that a decision to recuse should rise or fall on what is said in such venues. That would be

[26]In Appendix K we are attaching examples, most reprinted from WESTLAW, of the public discourse about this case in the popular media. In Appendix L, we include copies of two of the over 37,000 petitions asking the government for an investigation into the Court's conduct in *Lambert I*, something which could hardly be described as an everyday, run-of the mill occurrence, and a related published letter.

antithetical to the principle of judicial independence which is a cornerstone of our system of justice. Rather, we point to these things only to show that questions about the integrity of the judicial process in this instance are not hypothetical or fanciful. In this or any other high profile case the increased scrutiny of the process which necessarily follows from the proliferation of discussion brings into sharper focus, and exponentially increases, the concerns that 28 U.S.C. § 455(a) seeks to address: public suspicion and lack of confidence in the judicial process. There is therefore all the more reason then to err on the side of eliminating doubts by permitting someone who has expressed no views on important aspects of this case to preside over it. Just as others have stepped aside in order to forestall questions of this kind in cases commanding great public interest, *see, e.g.*, *Gore v. Harris*, 2000 WL 1802065 (Fla. Cir. Ct., Dec. 8, 2000)(recusal following reversal of ruling in election case by state supreme court), we submit that the Court should do likewise here and should direct the Clerk to reassign this litigation.

CONCLUSION

WHEREFORE, the Court should recuse itself in this matter and should direct the Clerk to reassign this matter to another member of this Court.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

WILLIAM H. RYAN, JR.
Executive Deputy Attorney General
Criminal Law Division

ROBERT A. GRACI
Assistant Executive Deputy Attorney General
Law and Appeals

By: _____
AMY ZAPP
Senior Deputy Attorney General
Capital Litigation Unit
Attorney I.D. No. 28065

OFFICE OF ATTORNEY GENERAL
Capital Litigation Unit
16th Floor - Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 783-7128
FAX: (717) 783-5431
E-MAIL: azapp@attorneygeneral.gov

JEROME T. FOERSTER
Senior Deputy Attorney General
Appeals and Legal Services Section

JONELLE L. HARTER
Deputy Attorney General
Capital Litigation Unit

DATE: June 14, 2001

Counsel for RESPONDENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA MICHELLE LAMBERT,	:	
Petitioner	:	**CIVIL ACTION NO. 01-CV-2511**
v.	:	
	:	
CHARLOTTE BLACKWELL,	:	**(JUDGE DALZELL)**
SUPERINTENDENT, *et al.,*	:	
Respondents	:	

CERTIFICATE OF SERVICE

I, **AMY ZAPP, Senior Deputy Attorney General**, hereby certify that I this day served **Respondents' Motion for Recusal of Assigned Judge and Supporting Memorandum** by causing it to placed in the United States mail, first class postage prepaid, at Harrisburg, Pennsylvania, addressed to counsel for petitioner as follows:

Peter S. Greenberg, Esq.
Christina Rainville, Esq.
SCHNADER HARRISON SEGAL & LEWIS
1600 Market, Suite 3600
Philadelphia, PA 19103

(Counsel for Petitioner)

_____
AMY ZAPP
Senior Deputy Attorney General

DATE: June 14, 2001